IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 622 OF 2005

IN

WRIT PETITION NO. 1023 OF 2003

The Worli Pankaj Mansion Co-operative Housing Society Ltd. .. Petitioners

V/s

Brihanmumbai Municipal Corporation and Ors. .. Respondents

And

Chetan Dalal & Ors. .. Respondents/ Intervenors

Mr.S.G. Joshi (Respondent No.11) in person in support of the motion.

Mr.R.M. Nakhwa i/b Mr.V.B. Dhavan for the Petitioners.

Ms.A. Savla for Respondent No.1.

Mr.Shyam Divan i/b Harakchand & Co. for Respondents No.6 to 10.

Mr.F. Devitre i/b Mr.K.P. Jain for the Respondents/ Intervenors.

Mr.Shailesh Shah i/b Mr.Mukesh Jha for the Intervenors.

CORAM : H.L. GOKHALE & ABHAY S. OKA, JJ.

DATE : 20TH JANUARY 2006

P.C. :

1. This motion is taken out by Mr.S.G. Joshi

(Respondent No.11) who is a resident of Building "B" of the Petitioner Society.

2. This motion has three prayers. Prayer (a) is to direct the Intervenors represented by Mr.Devitre and Mr.Shah to pay the arrears of the amounts which are due to the Society. The list is annexed at Exhibit-A to this motion. By an order passed by us on 10th January 2006 on Notices of Motion No.322 and 622 of 2005, we had asked the counsel appearing for these Intervenors as to whether these arrears will be paid over or at least deposited in Court to facilitate the repairs, Mr.Devitre and Mr.Shah stated that the persons whom they are representing have no faith in the present management of the Society and, therefore, they are not agreeable to deposit the amounts in Court also. As far as this claim for arrears is concerned, it will be for the Society to take appropriate steps to recover them in accordance with law. We are declining to give any such direction in exercise of writ jurisdiction.

3. As far as prayer (b) is concerned, it seeks to direct removal of deities which are fixed on the two pillars on the ground floor of the structure abutting Building "B". It is submitted that it is an unauthorised structure and that the deities are on the outer walls of

the Society. It is submitted that removal of the structure is required for carrying out the repairs.

4. Mr.Nakhwa appearing for the Petitioner Society had pointed out earlier that the Society has received some Rs.17 lakhs from members of Building "B". He has submitted a report of architects pursuant to our order passed on 10th January 2006. Mr.Nakhwa states that according to the balance-sheet, the figure is Rs.12 lakhs and not Rs.17 lakhs. The Society will be at liberty to proceed to carry out the work out of the funds available to it as of now. For carrying out that repairs, it will be open to the Society to take whatever steps that are necessary in that behalf. They will carry out the repairs as per the permission granted by the Municipal Corporation. The order passed on 29th April 2003 on the writ petition remains.

4. Motion stands disposed of.

(H.L. GOKHALE, J.)

(ABHAY S. OKA, J.)